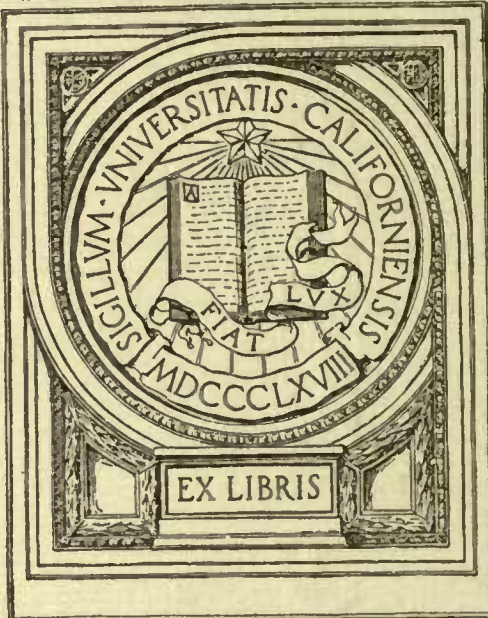


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A DISCUSSION OF

THE IRRIGATION DISTRICT

MOVEMENT

A THESIS PREPARED IN THE
DEPARTMENT OF IRRIGATION,
UNIVERSITY OF CALIFORNIA.

May, 1914

by

Orson Wims

O. W. Israelson

Candidate for the Degree of Master of Science.

Presented to Advisor for approval March 30, 1914.

Approved

A. E. Chandler

Advisor

Presented to Head of Department of Irrigation

for approval

April 1

, 1914.

Approved

B. A. Scherrey
Head, Department of Irrigation.

UNIVERSITY OF
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Approved B. D. Sherman
Head, Department of Irrigation.

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University of California

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though it did not permit, as Spain did, a majority of proprietors to carry on an irrigation enterprise and compel the minority to bear its share of the expense. Many of the associations formed under these early European laws were successful in solving problems of water distribution which had vexed the farmers for centuries. The General Association West of Asia, which is now frequently cited as representing excellent organization, was given considerable mention in a report to Congress of Irrigation conditions in California, published by Alexander, Wendell, and Davidson, in 1874.¹ It is therein shown that after fourteen years of operation substantial profits had been made.

¹Report of Board of Water Commissioners of Irrigation in San Joaquin, Tulare, and Sacramento valleys, p. 2-4.

THE IRRIGATION DISTRICT MOVEMENT.

HISTORY.

By the able assistance of the statesman, Count Cavour, Italy, on July 3, 1853, provided for the organization of water users' associations, to which our irrigation districts are somewhat similar. Spain, likewise, early provided that "the administration of the water supply and use shall be in the hands of and under control of the irrigators."¹ The foregoing principle was adopted also in France, although it did not permit, as Spain did, a majority of proprietors to carry on an irrigation enterprise and compel the minority to bear its share of the expense. Many of the associations formed under these early European laws were successful in solving problems of water distribution which had vexed the farmers for centuries. The General Association West of Sesia, which is now frequently cited as representing excellent organization, was given considerable mention in a report to Congress of irrigation conditions in California, published by Alexander, Mendell, and Davidson, in 1874.¹ It is therein shown that after fourteen years of operation substantial profits had been made.

¹Report of Board of Water Commissioners of Irrigation in San Joaquin, Tularé, and Sacramento valleys, p. 2 & 73.

The first irrigation district legislation in the United States was passed by Utah on January 20, 1865, apparently independent of European laws. It provided that the county clerks, upon application from a majority of land owners, create a district whose electors should be land owners, if a land tax were levied, or tax payers if the assessment were a property tax.¹ Very little practice was conducted under this early law. Only a few small districts were formed.² The law was repealed in 1884 by a second act which was repealed in 1897, leaving the State with no irrigation district law until 1909, when a law based upon the Wright Act was adopted.

On April 1, 1872, the California Legislature passed "An Act to Promote Irrigation by the Formation of Irrigation Districts."³ It provided that when owners of certain lands desired to irrigate or drain the same, they could present to the Board of County Supervisors a petition which should contain a detailed description of the land, the names of the land owners, and of three persons whom they desired as trustees during the first three months of district organization. After any petitioner had, by affidavit, verified the petition, and it had been duly published in the county or counties in

¹Compiled Laws of Utah, 1876, p. 219-225.

²Kinney on Irrigation, Vol. III, p. 2524.

³Statutes of California, 1871-72, p. 945-948.

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¹Compiled laws of Utah, 1878, p. 210-225.
²Shimney on Irrigation, Vol. III, p. 2324.
³Statutes of California, 1871-72, p. 945-948.

which the lands were situated, the Board of Supervisors was duty bound to note its approval, which created the district. By laws, powers of trustees, reports and assessments, were briefly provided for. This law, however, remained practically inoperative.¹

During the decade following this early California act, legislation was enacted especially for various districts. On March 1, 1874,² an act was passed for Los Angeles County, which provided the office of County Superintendent of Irrigation, whose duty it became, upon petition from a "majority of the property owners" to examine the plans and feasibility of the proposed irrigation systems, and thereupon notify the Board of County Supervisors, who should then call an election upon the questions of taxation for the construction of irrigation works, and the selection of water commissioners. Only property owners who were tax payers were permitted to vote. It seems that no practical results followed this enactment.

The following legislature, on March 6, 1876,³ passed an act creating the West Side Irrigation District. This law provided for five commissioners, an assessor, collector, and treasurer. It further provided for issuing bonds, in amount four million dollars, of twenty years duration at eight per cent interest, to be redeemed with funds se-

¹U.S.G.S. Water Supply Paper #17, by C. E. Grunsky, p. 20.

²Statutes of California, 1873-74, p. 312-318.

³Ibid. 1875-76. p. 731-747.

cured by levying a direct tax, which was made a lien upon the lands within the district.

Although elaborate surveys were made, upon which were based plans of the proposed system and estimates of cost which were, according to William Ham Hall,¹ well within economic limits when considered in connection with the immense irrigable area and sufficient water supply, the canal was not constructed. It was planned to take water from Lake Tulare and terminate the works on the eastern edge of Antioch.

The next attempt at irrigation district legislation was made on March 30, 1878, when the Modesto Irrigation District was created. This act provided that direct taxes should be levied only for repairs and that the construction fund should, ultimately, be secured from the increase in the gross tax receipts due to a contemplated rise in land values. The credit of the State and Stanislaus County was pledged for the payment of bonds in amount up to \$500,000. "Nothing substantial resulted from this law."²

The failure of these early district acts to bring practical results probably added to the zeal with which questions of irrigation and water law were discussed in California during the late seventy's and early eighty's. The office of State Engineer, which was created on March 29,

¹Report to Governor Irwin by Board of Commissioners, West Side Irrigation District, Feb. 28, 1877.

²Office of Experiment Stations, Bulletin 158, p. 96.

1878, in addition to gathering considerable physical data of value to irrigation development, made an extensive study of existing irrigation laws in Spain, France, and Italy, from which it based recommendations to California irrigators who were anxious for rational laws to govern the use of water in crop production.¹ In 1880, a preliminary draft of desirable irrigation laws was presented to the Governor by the State Engineer, which included an act to govern the formation of irrigation districts.² At a State Irrigation convention in Riverside, on May 14, 15, and 16, 1884, Mr. William Ham Hall, after explaining fundamental principles underlying desirable irrigation laws, said:-

"Under this system, or any, in fact, it will be not only expedient; but necessary, to have a law for the organization of farming neighborhoods into irrigation districts with powers of quasi municipal corporations." The State Irrigation convention met again in December of the same year and discussed questions of irrigation law. It appointed a legislative committee which urgently recommended to the legislature of 1885 the passage of laws controlling water appropriation and abolishing riparian rights. The committee, after such laws were passed, expected to ask for an act under which irrigators could organize to build

¹Report California State Engineer, 1880.

²Ibid.

and control their own irrigation works. As the irrigation bill of 1885 met strong opposition and finally defeat at the hands of the riparian interests, the desired law for farmers' organizations was not presented.

The gradual decline of crop yields which inevitably followed the continuous grain production in an arid climate, the refusal of owners of large tracts of land to improve or sell, in part, their holdings; the profound respect given to riparian owners, the chaotic condition of water rights, and other less important factors, demanded a remedy which the friends of irrigation, since the defeat of the proposed water code in 1885, sought in the channel of community organization.

Mr. C. C. Wright, who was familiar with the progress of water users' associations in Europe¹ and the laws under which they were operating, was sent to the Legislature from Stanislaus County, expressly to provide some law under which California farmers could build and operate irrigation works to supply water to their lands. He was appointed a member of the committee on irrigation and drafted a bill which passed the House unanimously and, on March 7, 1887, became the law upon which thirteen additional States have based similar legislation. It

¹Mr. C. E. Grunsky, who was connected with the Office of State Engineer, California, a number of years preceding the passage of the Irrigation District law, informed the writer in personal conversation that Mr. C. C. Wright frequently called at the State Engineer's office and discussed questions of irrigation law, which were at that time being studied in connection with the experience had in Europe.

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provided that fifty or a majority of freeholders might propose the formation of an irrigation district by petition to the county supervisors, who were required to hear the petition, exclude nonirrigable lands, include by request of owners neighboring lands susceptible of irrigation, divide the districts into five divisions, and conduct an election to determine whether or not the district would be created, and, if created, elect a board of directors and other officers. Residents of the district who were franchised under the general election laws of the State constituted the district electors. Its officers consisted of five directors, an assessor, collector and treasurer. The board of directors was given power to appoint a president and a secretary to conduct general business and distribute water, " to each land owner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district, provided that any land owner may assign the right to the whole or any portion of the waters so apportioned to him." Right of eminent domain was given the board. The use of water was declared to be a public use. In addition to the powers above outlined, the board was invested with power to call a special election to determine whether or not bonds should

be issued in order to purchase or construct irrigation works, to levy a tax upon the basis of valuation of lands, and to sit as a board of equalization. Bonds, if issued, were made payable in graduated per cents, beginning with the eleventh, and ending with the twentieth year. Sales under 90 per cent par were prohibited, and the rate of interest was fixed at 6 per cent per annum, payable semi-annually. The real property in the district was made liable for payment of the principal and interest by direct tax, which, in case of delinquency, was to be paid by sale of the lands through public auction. The owners of land sold for delinquent taxes, who were permitted to designate what lands, if not all, were to be sold, were given the opportunity to redeem the property within the period of one year. Thus a movement which had been agitated in California fifteen years and had been repeatedly recommended on the basis of experience in other countries took its first effective legislative form.

EARLY DISTRICT ACTIVITY.

That the irrigators of California were anxiously awaiting an opportunity for rapid irrigation development is made evident by the immediate formation of districts under the Wright Act. In 1887, the same year in which the act was passed, the Modesto, Turlock, Central, and Vineland

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districts, including an area of 456,550 acres, were created. During the following year, the Kraft, Orland South Side, Colusa, Browns Valley, Madera, and Alta districts were formed, covering a total area of 617,500 acres,¹ and, in 1889, the Sunset and Tulare districts which proposed to irrigate 402,600 acres, came into being. In 1890, the Selma and Kern districts, including 447,300 acres, were created, followed, in 1891, by the Tule River and Huron districts, which contemplated irrigating over 22,000 acres. It was thus planned during the first five years of the existence of the Wright act, to irrigate by district activity 1,945,950 acres.¹ Only two districts, however, the Browns Valley and Vineland, had actually constructed completed works at this time.² In fact, after almost twenty-five years the districts were capable of irrigating only 606,351 acres and had actually irrigated but 173,793, or 31.2 and 8.9 per cent, respectively, of the acreage included in the districts which were organized in less than five years. According to Mr. L. M. Holt, Secretary of the Convention of Irrigation Districts held in Sacramento January 6, 1893, the thirty-eight districts which were then in existence included 2,149,067 acres. Thirty-two of these districts had voted

¹U.S.G.S. Water Supply Paper No. 17, by C. E. Grunsky, p. 23-25.

²Report on Agriculture by Irrigation, F.H. Newell, Eleventh Census, 1890, published 1893.

districts, including an area of 458,580 acres, were created. During the following year, the Klamath, Oregon, South Side, Colusa, Brown Valley, Madras, and Alta districts were formed, covering a total area of 817,500 acres, and, in 1889, the Sunset and Tulare districts¹ which proposed to irrigate 402,600 acres, came into being. In 1890, the Selma and Kern districts, including 447,300 acres, were created, followed, in 1891, by the Tule River and Huron districts, which contemplated irrigating over 22,000 acres. It was thus planned during the first five years of the existence of the Wright act, to irrigate by district activity 1,945,950 acres.¹ Only two districts, however, the Brown Valley and Vineland, had actually constructed completed works at this time.² In fact, after almost twenty-five years the districts were capable of irrigating only 808,381 acres and had actually irrigated but 173,793, or 21.2 and 8.9 per cent, respectively, of the acreage included in the districts which were organized in less than five years. According to Mr. J. M. Holt, Secretary of the Convention of Irrigation Districts held in Sacramento January 6, 1893, the thirty-eight districts which were then in existence included 2,143,067 acres. Thirty-two of these districts had voted

bonds averaging \$9.16 per acre on 1,830,769 acres, or a total of \$16,770,000. District reports published in the Orange Belt of January 1893, indicate that fifty districts had been organized, including a total acreage of 2,284,545. Some districts were proposed that were never organized and obviously some of the organized districts remained inoperative. Recent investigation by Mr. Frank Adams, Manager Irrigation Investigations in California, shows that only forty-nine districts were organized, and of these but twenty-five issued bonds.

OPPOSITION MET AND CONSTRUCTION OF THE LAW.

Notwithstanding the over-optimism of many irrigators opposition to irrigation districts was keen from the very beginning. This opposition came chiefly from owners of town lots and of large tracts of land. It was based largely upon the grounds: first, that the act permitted private property to be taken for a private use; and, second, that such property was taken without due process of law and that the act was therefore unconstitutional.

That the courts were almost unanimous in upholding the constitutionality of the act is evident from the following notable decisions. Little over one year after the law was passed, the secretary of the Turlock District refused to sign the bonds which the district proposed

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to issue on the ground that the statute was unconstitutional and void. Many points of attack were attempted, some of which are:- Irrigation districts are private corporations and therefore levy taxes to improve private lands. Assessments are not limited to benefits conferred, right of hearing is not given to all land owners, legislative powers are conferred upon county supervisors, and the act does not provide due process of law.

Judge Foote, in reply to these objections, upheld the constitutionality of the act, decided that the irrigation district was a quasi public corporation similar to a drainage district and said:- "The nature of the assessment is one for local improvement, which, however, eventuates in the advancement of the public good and such assessments and collections can be lawfully made."¹ He maintained further that the provisions of the act relative to the condemnation of private property, land, water, etc., for the uses prescribed therein, were in harmony with the State constitution and statutes and in strict consonance with the views of the Supreme Court.² The decision was based upon many early cases upholding the constitutionality of drainage districts, chief of which was that of Hagar v. Supervisors of Yolo County,³

¹Turlock Irrigation District v. Williams, 76 Cal.360, 18 Pac. 379 (1888).

²Lux v. Haggin, 69 Cal. 255, 10 Pac. 674 (1886).

³Hagar v. Supervisors Yolo County, 47 Cal. 222.

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¹*Central Irrigation District v. De Lappe*, 79 Cal.351; 21 Pac.825 (1889)

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and those to build levies for the purpose of protecting lands from "falling into a like condition of uselessness . . . stood upon the same solid ground," the court said:- "Whether the reclamation of land be from excessive moisture to a condition suitable for cultivation, or from excessive aridity to the same condition, the right of the legislature to authorize such reclamation must be upheld upon the same principle, viz., the welfare of the public, and particularly of that portion of the public within the district."

Further, the court showed that the constitution specifically gave the legislature power to provide for a government of "county, city, town, or other public or municipal corporations."¹ And then after an examination of the mode of organization of districts said:- "Here are found the essential elements of a public corporation, none of which pertain to a private corporation." In reply to the second objection, the court held that such hearing was unnecessary and that the fact that land owners could be heard by the board of equalization on the question of valuation of their property was sufficient to avoid having it taken from them without due process of law. That the basis of assessment upon valuation of real property rather than according to the benefits derived made the act unconstitutional was overruled by citing many cases upholding such basis of

¹California Constitution, Art. 11, Sec. 9.

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Notwithstanding the specific declaration of the constitutionality of the act in the early cases, expensive litigation on the same and relevant questions continued but the courts almost unanimously upheld the constitutionality upon every point. However, Judge Ross, of the United States Circuit

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Notwithstanding the specific declaration of the constitutionality of the act in the early cases, expansive litigation on the same and relevant questions continued but the courts almost unanimously upheld the constitutionality upon every point. However, Judge Ross, of the United States Circuit

Court for Southern California, on July 22, 1895, in reply to the plea that the act provided for the taking of property without due process of law, said:- "Private property is thereby authorized to be assessed and sold to provide water to supply the landowners of a certain district more or less limited in extent for irrigation purposes." He argued that every improvement advances the public good and further that the assessments made under the act must be limited to the benefits imparted.¹ Quoting from Hagar v. Reclamation District, 111 U.S. 708, (1884), which states that if an assessment is found to be suitable or admissible in the special case, it will be adjudged to be due process of law, but, if found to be arbitrary, oppressive and unjust, it may be declared to be not due process of law, the judge said emphatically "to take one's property without affording him any opportunity to show the insufficiency of the petition, the very thing that forms the basis of the proceedings under which the taking is to occur, the vital, all important question, is arbitrary, oppressive and unjust."

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was overruled by this tribunal on Nov. 16, 1896. (Fallbrook Irrigation District v. Bradley 164 U.S. 112). It was argued that the act violated the federal constitution, which reads:- "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," because:

1. The use of water was not a public use.
2. The act applied to lands which needed no irrigation.
3. It provided no hearing on the proceedings for organization or on the benefits derived.
4. The basis of assessment was fundamentally wrong.

The court upheld the public use doctrine in the following language:- "Taking all of the facts into consideration . . . we have no doubt that the irrigation of really arid lands is a public purpose and the water thus used is put to a public use."

The second point was considered one of fact to be determined in each case, since the land which can properly be so included was sufficiently limited in its character by the provisions of the act. Questions of fact settled by the State tribunals cannot be reviewed by the Supreme Court.

It will be remembered that Judge Ross emphatically urged that no opportunity of contest was allowed the land owner to test the sufficiency of the petition. On this point the Supreme Court forcibly pointed out that the very fact that the petition was to be heard by the board "upon notice" gave the persons interested in or those who may be affected by the proposed improvement the right to appear before the board and "contest the facts upon which the petition was based," and also the right to be heard as to the benefits which would accrue to any particular land included in the proposed district. After a detailed discussion, based upon many State¹ and national precedents, the courts settled the question of right of hearing in the following language:- "Thus the act provides for a hearing of the land owner, both as to the question whether his land will be benefited by the proposed irrigation and when that has been decided in favor of the benefit, then upon the question of valuation and assessment of, and upon, his land included in the district. As to other matters, the district can be created without notice to anyone. Our conclusion is that the act, as construed with reference to the objections considered under this third head is unassailable."

¹Hagar v. Reclamation District, 111 U.S. 701 (1884). Lent v. Tillson, 140 U.S., 316 (1891). Poulson v. Portland, 149 U.S. 30 (1893). In re Madera Irrigation District, 92 Cal. 296, 28 Pac. 272 (1891). People v. Selma Irrigation District, 98 Cal. 206, 32 Pac. 1047 (1893). Spencer v. Merchant, 125 U.S. 345 (1888). Walston v. Neven, 128 U.S. 578 (1888).

While it was admitted that the method of assessments may not accomplish the most equal and exact justice which the nature of the case would permit, yet it was clearly shown that such method was not counter to any provision of the federal constitution,¹ and that the objection considered was therefore untenable.

Thus, points of attack which had become trite by nearly ten years of tedious litigation were finally given a definite construction. That this litigation was usually instituted and conducted through honest motives is probable, but that such was not always true is obvious from investigations conducted by Mr. Frank Adams which are summarized in part as follows:

"Evidence that has been collected disclosed instances of at least one dishonest judge, of crooked promoters, criminal evasion of the law, and inefficiency, but one would not seem warranted in saying that such conditions were general."

That both of the agencies above mentioned, together with a third of equal importance, were operative, is clearly evident, and vividly expressed in Mr. Adams' further statement that "The districts were victims of these things, together with the over-optimism of the times and the

¹Davidson v. New Orleans, 96 U.S. 97 (1887). Walston v. Neven, 128 U.S. 578 (1888). Cleveland v. Krepp, 13 R.I. 59.
²Biennial Report of Department of Engineering, Cal. 1912.

vicious attacks of those who sought to destroy the law and all operations under it."

OTHER DIFFICULTIES.

The disastrous results of expensive litigation, occasional dishonesty, and over optimism might have been successfully overcome had the situation involved no other difficulties. The financial panic of 1893 is so familiar that special mention is unnecessary but in this connection it should not be overlooked that a great part of the burden fell upon the West. According to A. D. Noyes, 153 out of a total of 158 national bank failures of the year were in the South and West.¹ Although the ruin resulting in the seaboard cities from the panic was, according to Mr. Noyes, less than that of twenty years before, "no such financial wreck had fallen upon the West since it had become a factor in the financial world."

Further, the farmers were called upon to conduct this expensive litigation, meet interest payments upon bonds, where bond sales had been made, and pay other expenses incident to organization and maintenance of a new form of enterprise, during this decade of financial distress without the necessary increase in farm products,

¹Forty Years of American Finance, p. 193.

since they were still awaiting the use of irrigation water. Indeed, the change of farm yields during the decade was downward rather than upward. An examination of rainfall records at various stations in central and southern California shows a marked deficiency during this period with a minimum in 1898 of less than five inches in Fresno and Modesto, and 9.31 inches in San Francisco, a deficiency unprecedented since 1850.¹

That the rainfall in California has a direct relationship to crop yields is shown by Fraser² in a diagram representing the curves of annual wheat production from 1868 to 1897 and of spring rainfall during the same period. The wheat curve, which shows a marked decrease of product as compared with the previous decade, coincides with the rain curve with striking accuracy, giving evidence of but three exceptions. These occurred in the seasons 1888-89, 1889-90, and 1896-97. In explaining them, the author says. "The former was a year of fair rainfall and big crops, which is accounted for by the splendid precipitation amounting to 8.91 inches, which fell in November and December . . . with the very favorable distribution of the whole seasonal precipitation. The next year will be remembered for years to come as one of the wettest in California, and one which literally drowned out everything.

¹U.S.D.A. Weather Bureau, Bulletin W., Sec. 1-57. W₁ V-1.
²Overland Monthly, June, 1899, p. 525-27.

The last one of the trio, that of 1896-97, was wet enough during January, February, and March, when 10.35 inches fell, but the later rains were followed by parching winds and forcing heat, causing an unusual shrinking of the kernels and diminishing the crop very materially."

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Undoubtedly the foregoing facts justify the conclusion by Mr. Frank Adams,--"That more districts would have succeeded in more prosperous times."

ADDITIONAL LEGISLATION.

In the light of these considerations concerning the legal, financial and economic problems met by irrigation districts, the salient amendments to the Wright Act in the decade immediately following its passage are easily understood. The legislature of 1889, in order to add security to investors in irrigation bonds, requested the Superior Court, upon petition from the Board of Directors of an irrigation district, to make judicial examination of the proceedings had in organization and bond issue, and

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if found regular, to issue a decree so stating. This act is constitutional.¹ The decree was at one time held subject to direct attack in case of fraud, but later the Supreme Court argued that the purpose of the act was to furnish a barrier against subsequent attacks upon such ground.² It cannot be attacked collaterally.³ Although its binding effect has been questioned in the U.S. Supreme Court,⁴ its validity is established by the State Courts and its value confirmed by practice.⁵

The Board of Directors was, in 1891, given power to mortgage all property owned by the district as additional bond security, but this amendment was held unconstitutional and void in *Merchants Bank v. Escondido Irrigation District*, 144 Cal. 329, on the grounds, 1st, that it permitted the taking of private property without due process of law; and, 2nd, that the additional burden added by the board of directors impaired the obligation of the original contract between the State and the district land owners. A further act of 1891 made a vote of the district electors necessary to include or exclude lands, but in 1893 the board was given

¹*Crall v. Poso Irrigation District*, 87 Cal. 140, 26 Pac. 797 (1890)

²*Fogg v. Perris Irrigation District*, 154 Cal. 209, 97 Pac. 316.

³*People v. Selma Irrigation District*, 98 Cal. 206, 32 Pac. 1047 (1893).

⁴*Tregea v. Modesto Irrigation District*, 164 U.S. 179 (1896).

⁵*Kinney on Irrigation*, p. 2565.

power to use its discretion in this matter.¹

Those districts whose indebtedness was not over two-fifths of the assessed valuation of the real property, were, after 1893, permitted to dissolve by a three-fifths vote of their electors, and those having issued bonds in excess of their needs were permitted, upon consent of the bond holders, to reduce their indebtedness. In 1895 it was provided that districts having on hand unsold bonds could destroy them, and, such destruction as may have taken place was confirmed by the legislature. Two years later the Wright-Bridgford act was passed, which is with a few additions and amendments California's irrigation district law to-day. It provided, that a majority in number of land owners, representing a majority in value of lands, must sign the petition to the board of supervisors, and also a right of appeal from the order of the board concerning the sufficiency of the petition. The latter provision was declared unconstitutional in the case of *Chin v. Superior Court*, 156 Cal. 478. Such declaration did not affect the validity of the act. It was, in the case cited, held that boards of supervisors, which occasionally act as quasi-judicial bodies, are in no manner considered inferior courts, and that the provision therefore violated the constitution which provides that a superior court "shall have

¹See cases cited on p. 28..

appellate jurisdiction in such cases arising in Justice's and other inferior courts in their respective counties as may be prescribed by law."

A desirable continuity of officers was provided for by electing biennially part of the board of directors, whose office tenure was fixed at four years, and small districts were allowed three instead of five electors.

The life of a bond issue was rightly extended to twenty years, but the financial situation was aggravated by the additional requirement that bonds be sold at par. In case the bond fund reached ten thousand dollars, it was provided that bonds could, upon consent of the holders, be redeemed. Special assessments were permitted if approved by the electors in case the proceeds from the sale of bonds were inadequate. Each district was required to publish annually a verified statement of its financial condition.

RECENT DISTRICT ACTIVITY.

Since the above act was passed, the South San Joaquin, the Oakdale, the San Ysidro, and the Imperial Valley districts have been formed. These districts have, with the exception of the Imperial Valley, issued and sold bonds and are now delivering water to the farmers.

The Imperial Valley District contemplates voting \$4,000,000 bonds bearing 5 per cent interest upon receiving a report from the State Engineer. It will deliver water to its members this year. These districts are progressing nicely, although some opposition is being met. The 1913 report of the Oakdale district shows, in a systematic balance sheet, a floating indebtedness of \$106,666.12 and a funded indebtedness amounting to \$1,980,500. Its resources are itemized in sufficient detail to make them easily understood. The Le Mesa, Lemon Grove and Spring Valley Irrigation District recently organized contemplates issuing \$1,250,000 bonds and on March 31 the electors of the Modesto district will be called upon to authorize an issue of \$610,000 bonds.

Under the water district act, passed in 1913, the Palo Verde Mesa people, at whose instance the act was passed, expect to form a district to irrigate 47,000 acres. They are now attempting to get a bill through Congress which will enable them to tax Government lands included in the district for the payment of part of the district's expenses. The Fernando Valley people are attempting to form a district under the same act. Under the 1913 county irrigation district act, passed at the instance

of the Los Angeles Aqueduct people, organization of one or two districts is being attempted.

ADOPTION IN OTHER STATES.

In 1890, Washington, the first State to adopt legislation based upon the Wright Act, provided for irrigation districts. Kansas followed in 1891, Idaho, Nebraska and Oregon in 1895, passed irrigation district laws.

The New Sweden and Pioneer Irrigation Districts formed respectively during the years 1900 and 1901, in Idaho,¹ have been very successful, but the first three districts attempted in Oregon failed.²

After 1897, Colorado, which passed an act in 1901, was the first State to adopt Irrigation District legislation. Texas followed in 1905, as did Montana and Wyoming in 1907, and New Mexico and Utah in 1909. Arizona passed an act in 1912. The Dakotas and Oklahoma have not yet adopted district legislation after the Wright act. South Dakota in 1891 passed an act authorizing townships to form districts in order to develop and use subterranean waters for irrigation.

¹Report of State Engineer of Idaho, 1910-12.

²Report of State Engineer of Oregon, 1908, p. 84.

STATUS OF LEGISLATION.

PETITION TO ORGANIZE. At present Colorado, Montana and Utah provide that the signers of a petition to initiate an irrigation district must own a major part of the land proposed to irrigate and represent a majority of the land owners. In Idaho and Nevada, at least one-fourth of the total land must be owned by the petitioners, in New Mexico more than one-half, and in California and Texas the real property owned by the petitioners must represent a majority of the total value of the land proposed to include in the district, while in Kansas it is necessary that three-fifths of the resident owners sign the petition. The Nebraska statute requires the signatures of a majority of the electors "owning not less than ten acres of land or holding lease hold estates of not less than forty acres." This requirement has been upheld by the supreme court.¹ Fifty or a majority of the land owners, as originally provided in the Wright Act, are required to sign the petition in the other States.

With the exceptions of Montana and Oregon, where the court is required to hear the petition and in Montana create the district without calling an election, it is

¹Alfalfa Irrigation District v. Collins, 46 Neb. 411, 64 N.W. 1086.

presented to the board of county commissioners or supervisors in the county in which most of the lands lie. All of the States provide for confirmation proceedings which are mandatory only in Nevada, Texas and Utah.

POWERS OF BOARD. The boards of directors are uniformly given power to conduct general business, provide details for water distribution, pro rate in times of scarcity, and include and exclude lands. To exclude lands, they must, in California, Nebraska and South Dakota, secure the assent of the bondholders. Concerning irrigable lands, the action of the board relative to land exclusion is conclusive.¹ Statutory provisions, such as those of Colorado, Nebraska and Utah, which prohibit the inclusion of non irrigable lands must be adhered to by the board.² Limitations are generally placed upon their power to create indebtedness, either at a fixed sum, as \$2,000 in Nevada, or at an amount proportional to the size of the district, within certain limits, as 50 cents per acre in California and Montana.

¹ Andrews v. Lillian Irrigation District, 66 Neb. 458, '92 N.W., 612 (1902), '97 N.W., 336 (1903).

² Ibid.

SALE OF BONDS. The States having irrigation district laws all provide for the issuance and sale of bonds but differ in the details of procedure. California, Idaho, Kansas, Montana, Nevada and Texas require that bonds be sold at par, Oregon and Washington that 90 per cent par be the minimum rate; while the other States stipulate 95 per cent par as the least for which bonds may be sold. If bonds are exchanged for goods, the minimum rate is par in Arizona and Oregon. Montana and Idaho permit a maximum of 7 per cent interest, while the other States dictate 6 per cent as the highest rate. Two States allow a period of 40 years in which to pay the principal of the bonds. Four allow thirty years, and the remaining eight require the total amount to be paid in twenty years from the date of issue. The bonds become a lien upon the lands within the district and in Washington they become also a lien "upon all the water rights and property acquired by any irrigation district and upon any canal or canals, ditch or ditches, flumes, feeders, storage reservoirs, machinery, and other works and improvements acquired, owned or controlled by said irrigation district," which, in case of default of payment, may be taken over, owned and operated by the creditors.

California, Montana and Texas have attempted to make irrigation district bonds more salable by legislative means. Thus, in California, it is the duty of a commission composed of the Attorney General, the Superintendent of Banks, and the State Engineer to examine the feasibility of the district, which, if approved, entitles its bonds to registration at the office of the State Controller and his certificate attached to each bond, after which they are considered legal investments for trust funds, insurance companies, banks, etc., and are placed upon the same legal basis as bonds of school districts, counties, cities, and municipalities. In Montana, bonds are, after the irrigation district records have been examined by the State examiner, authorized as investments of domestic securities. Texas has its Attorney General pass upon the regular confirmation proceedings, whereupon the validity of the bonds is published and a certificate from the comptroller of public accounts attached to each bond. Idaho, in 1913, provided for an irrigation securities commission, whose duty it is to secure information upon which to devise a system for making irrigation district bonds desirable on the market. The commission will report to the 1915 legislature.

ASSESSMENTS. Ultimately, irrigation district funds are secured through assessments levied upon the land. California and Wyoming base the taxes on the assessed valuation of the land within the district. Arizona, Colorado, Montana, New Mexico, South Dakota, and Oregon base their assessments upon the number of acres of land within the district at a uniform value per acre. Nebraska bases its assessment upon cash value without improvements, Idaho and Nevada in proportion to benefits accruing, which must be determined by the board of directors. This system was upheld in *Pioneer Irrigation District v. Bradbury*,¹ but the Board of Directors of the New Sweden Irrigation District was restrained from making assessments for the payment of the initial cost of works upon lands to which a water right had attached before district organization. The annual assessment for operation expenses was upheld.² Texas levies taxes upon all property, "whether real, personal or mixed," and thus innovates in the basis of assessments. Kansas secures part of its revenue from water rentals as well as from district taxes.³

¹*Pioneer Irrigation District v. Bradbury*, 8 Idaho, 310; 68 Pac. 295 (1902).

²*Knowles v. New Sweden Irrigation District*, 16 Idaho, 217; 101 Pac., 81 (1909).

³See cases cited on p. 44, upholding an ad valorem tax.

Colorado allows the districts to assess its school and Agricultural College lands, Nevada reimburses the district for benefits accruing to State lands through district activity, but Idaho and Montana specifically provide that State lands shall not be assessed.

DISTRIBUTION OF WATER. In connection with the basis of assessment, the systems of distribution of water are important. Arizona, California, Colorado, Nebraska, New Mexico, Utah, Oregon and Washington provide that water shall be distributed ratably on the basis of assessment, giving each person that proportion of the total supply that his assessment bears to the total assessment. Kansas sells water to all persons in the district. Texas requires each water user to make application for water needed during the year between dates of January and March 1st, in which he must state the acreage to be irrigated and crops to be produced.

If all of the waters are not needed by district land owners, New Mexico and other States permit the board of directors to lease the surplus at a rate one and one-half that paid by district irrigators. The Supreme Court of Idaho has upheld the practice of districts furnishing

water to outside lands¹ but in California an irrigator was barred from using part of his assignment on land out of the district, which, it was held, "has to do solely with the irrigation of lands within the district and cannot appropriate water to any other purpose."² The board of directors in Idaho and Montana is given power to make rules for distribution of water. Such rules are subject to State law requiring classification of lands by a canal company according to priority of appropriation,³ and to rights vested in irrigators.⁴ The Wyoming board may collect tolls for part of all of the annual expenses, levy taxes or both collect tolls and levy taxes. It must pro rate water in times of scarcity.

ELECTORS. California's early laws provided that all persons living within the district who were qualified electors under the general election laws should constitute the district electors. Arizona, Idaho, Montana, Oregon and Utah now require only that district electors live in the respective States and own land within the district boundaries. In Colorado and Washington a land owner must live in a county where a portion of the lands lie and in

¹Settlers v. Settlers Irrigation District, 14 Idaho 509; 94 Pac. 829 (1908).

²Jenison v. Redfield, 149 Cal. 500; 87 Pac. 62 (1906).

³Brose v. Nampa and Meridian Irrigation District, 20 Idaho 281; 118 Pac. 504 (1911).

⁴Little Walla Walla Irrigation District v. Preston, 46 Ore. 5; 78 Pac. 982 (1904).

Colorado he must, if he lives out of the district, own forty acres within its boundaries. Nevada, New Mexico and Texas demand that district electors own property and live in the district. Nebraska requires its electors to own at least ten acres or have a lease of forty acres for a five year period. In Montana corporations and individuals may vote and one vote for each forty acres of land or major fraction thereof is allowed.

STATE SUPERVISION. New Mexico provides that plans of irrigation construction must be submitted to the State Engineer, whose approval is essential to a bond issue. Idaho and Nevada also require that all plans be submitted to the State Engineer and that annual reports be made showing the progress of the work and whether the funds, as estimated, will be adequate. Montana districts must furnish the State Board of Land Commissioners proof of proceedings had in the bond issue and the opinion of the county attorney as to their legality, showing also the total taxable property and indebtedness. The California laws provide that the plans by which it is proposed to organize a district shall be submitted to the State Engineer, who shall, within one month, report to the board of supervisors. Failure of the engineer to report will neither invalidate nor delay the proceedings and an adverse report from him may be overruled

by three-fourths of the qualified petitioners. Certified plans of construction work, drawn by a competent irrigation engineer, must be submitted by the board of directors to the State Engineer, who shall, within ninety days, report upon the water available for the district, and upon other desirable matters. The engineer shall be kept informed as to the progress and actual cost of the work by a report submitted through the district secretary after each regular meeting of the directors and by an annual report showing the general progress and conformity to plans submitted, from which he may make necessary recommendations. The engineer may, however, at any time examine the affairs of the district or request it for information deemed necessary.¹ Further, the district must have an examination made by the commission above described before it can issue bonds. California has, however, further complicated matters of irrigation district legislation by enacting in 1913 a law for the organization of county irrigation districts² and one providing for the organization of water districts.³

¹ California Session Laws 1913, p. 993.

² " " " " p. 785.

³ " " " " p. 815.

IRRIGATION DISTRICTS
AND OTHER FORMS OF IRRIGATION ENTERPRISE.

The remarkable success of the early irrigation development in the arid States can be attributed largely to two factors: first, it took place under the ideal system of ownership of the land and water rights being vested in the same persons; second, it was confined to the irrigation of fertile bottom lands, which necessitated only the cheapest kind of construction. The first factor is yet of paramount importance, but obviously the latter no longer applies, since river bottom lands were long since exhausted and hence initiation of an irrigation system necessitates the immediate acquirement of large sums of money.

INITIAL SOURCE OF FUNDS. Promoters and investors seeing the enormous profits made by small units having unsystematic methods were anxious to invest capital in irrigation works to bring water to the public domain with no thought of securing control of the land to be irrigated. They were, unfortunately, by the work of "land grabbers" and speculators, placed in a serious financial situation which reached its inevitable crisis in the panic of 1893 and ended an epoch of commercial canal building. During this period, however, the irrigation district law appeared as a result of the efforts of those who realized the

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necessity of having ownership of land and water rights in one unit. Although the "land grabber" was thus eliminated, the lack of control by some central authority gave rise to a second class of speculator, who became active in district promotion.

A further movement which began more directly as a result of the failure of large commercial enterprises terminated in the passage of the Carey Act, under which funds are furnished by private capital but control of initial action and construction work is placed under very close inspection of a central State authority, which requires absolutely honest endeavor on the part of the promoter, both in construction and settlement. Equal honesty and good faith is required of the settler, thus guarding the interests of the investor.

A third form of development has arisen wherein the initial funds used accrue from the sales of public lands. These funds are expended to reclaim both public and private domain but always under the most rigid engineering and legal scrutiny of well informed governmental officials who are directly responsible to the Secretary of the Interior as the representative of the United States.

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companies and commercial companies owning the land to be irrigated, strictly private corporations, are, except in Nebraska, not subject to direct State or federal control, there seems to be no good reason why irrigation districts which are public corporations should initiate works and issue bonds under no public supervision, when experience has taught that the expenditure of private capital to reclaim public domain, of federal funds to reclaim both public and private lands and of private capital to serve the public in such capacity can be safeguarded only by such supervision conducted by public officials who are acquainted with the intricacies of irrigation development.

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It is argued by some that a rigorous limitation of irrigation district indebtedness fixed by statute will materially retard the development of irrigation resources by district activity. Bond holders, however, declare that such limitation must be maintained for their protection. Casual examination of the cost of development under the Carey Act and reclamation projects² lends evidence to the former argument since the cost of water rights frequently reaches \$50 to \$75 per acre, amounts in excess of the value of many unirrigated lands. On the other hand, very recent

¹Report of Irrigation District Convention, Calif..

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experiences in Colorado¹ shows clearly that such limitation is necessary. The taxes on lands in the Denver-Greeley Valley Irrigation District being higher than the unirrigated land values warrant automatically prohibit a foreclosure, since it is impossible to find purchasers to bid on the tax certificates. Obviously, the land owners take no risk in refusing to pay the assessments since no one will buy their lands. Such condition has resulted in having a Colorado attorney advise the farmers to discontinue the payment of taxes because, in the near future, the bond holders would probably be anxious to settle at 50 cents on the dollar. The Orchard Mesa Irrigation District of Colorado is reported as having made a total expenditure which amounts to \$155 per acre,² a sum approximately three-halves the maximum cost of the most expensive Carey Act or reclamation projects.

It is evident from the foregoing facts that in the matter of initial source of funds and the assurance to the investor that such money will be economically and carefully expended, the present lax laws governing this phase of irrigation district work in the majority of arid States do not give the districts a status which compares favorably with other forms of irrigation enterprise.

EARLY MANAGEMENT OF DISTRICTS. Furthermore, lack of supervision in the period of initiation and construction

¹Data, not yet published, collected by Mr. Frank Adams, Irrigation Manager.

²Ibid.

of works has stimulated dishonest promoters who have taken advantage of the management under which irrigation districts operate. Indeed, if the factors causing the failure of the earlier irrigation districts were arranged in order of magnitude, undoubtedly inefficient management would be placed near the head of the list. Men who were unaccustomed to handling large affairs, though honest in purpose, became easy prey for unscrupulous individuals who held property, engineering or other personal interests in the prospective development. It is, hence, only natural that the most critical period with which district management has to deal is that of inception of scheme, organization of the district and construction of works, because of the many and varied classes of interests involved.

ULTIMATE MANAGEMENT. Although the problems of maintenance of an adequate water supply, efficient and satisfactory delivery to users and successful application to the soil may be equally involved, it has long since been recognized that they are most efficiently handled by the water users and hence practically all of the irrigation enterprises that have been initiated during the last two decades are so planned that ownership and control shall at some time revert to the water users. From the standpoint of ultimate irrigation management, all corporate

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enterprises may readily be classed as:

1. Systems owned and operated by private companies.
2. Systems owned and operated by public service companies.
3. Systems owned and operated by public corporations.

The first class, which includes all mutual companies, commercial companies which sell an interest in the system in connection with water rights, and governmental projects occupies by far the most important place in irrigation industry. The second class is relatively unimportant, while the third, in which only irrigation districts are included, is undoubtedly gaining prominence. Many mutual companies, public service corporations, and other commercial companies are changing to district organization.¹

While, as above pointed out, an important factor contributing to the failure of the early irrigation districts was inefficiency, this weakness is lessened when considered in connection with ultimate irrigation management, and, further, it is not then in the same degree peculiar

¹According to Mr. D. D. Price, State Engineer of Nebraska, many old canals have lately gone into irrigation district formation in Nebraska, among which are, Tri-State Canal Co., North Platte Irrigation and Land Co., and others of equal importance. Report State Engineer 1912, p. 15.

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The management is in each form of enterprise invested in a board of directors chosen in the first two classes by the stockholders, and in the third by the qualified electors of the district. The private corporations, except in Nebraska, are responsible only to their stockholders. The public service companies are responsible to the State public utility commissions, but the public corporations, except in California, Idaho and Nebraska, are directly responsible and report to no public authority.

ANNUAL CHARGES AND DISTRIBUTION OF WATER. In the matter of an annual charge for the going concern, private companies levy an assessment on the shares of stock, which becomes a lien thereupon and upon the water rights represented thereby. In water users' associations formed under the United States Reclamation Service, such assessments become a lien upon the stock, the water right, and the land to which the water right is appurtenant.

Public utility corporations make an annual charge for water which may be fixed by the utility commissions. The company can require annual payment of water rates in advance¹ but it cannot demand the payment of arrears as a condition precedent to furnishing water for the current year.²

¹Shelby v. Farmers Co., 10 Idaho 723; 80 Pac. 222 (1905);
Wheeler v. Northern Colorado Irrigation Co., 10 Colo. 582;
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Nor can it require payment for years in advance.¹ Public irrigation corporations tax the lands included and are unique in the basis of assessment, although the security of payments is closely analogous to that of the water users associations. According to the State Engineer of Nebraska, it is impossible to get cooperation and enforce the use of water and the payment of maintenance dues under mutual companies organized in Nebraska, whereas, such difficulty is eliminated by irrigation district organization. It is further pointed out by the same authority that non-resident land owners refuse under mutual organization to buy water rights or develop their holdings, but allow others to bear the burden from which they ultimately reap benefit in the rise of land values. The forced assessments of irrigation districts overcome these difficulties.² While the irrigation district basis of assessment and methods of collection compare favorably with other forms of corporate enterprise, they can undoubtedly be improved. The Texas system of one-third total levy pro rata per irrigable area, and two-thirds pro rata to water users, based upon uniform rates according to the class of crop grown, is an innovation for irrigation districts. Land speculators can thus be readily eliminated

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2 Biennial Report, Engineer of Nebraska, 1918.

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The legality of an ad valorem assessment has been attacked many times but has always been upheld by the courts.¹ Such assessments are included in the inherent power of taxation.³

Private corporations almost invariably base water distribution upon shares of stock which, ordinarily, represent water rights and are assessed as above mentioned. Public utility corporations have usually distributed water upon the basis of a charge for the area served, a method which has proved very wasteful to consumer and company and highly destructive of soil fertility as a result of the excessive use of water. But, the methods of irrigation districts are equally unsatisfactory. The laws of the majority of States provide "that all waters distributed for irrigation purposes shall be apportioned ratably to each land owner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the total sum assessed upon the district." As a matter of fact, however, the letter of

¹Fallbrook Irrigation District v. Bradley, 164 U.S. 112 (1896).
In re Madera Irrigation District, 92 Calif. 296, 28 Pac.
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¹ *California Irrigation District v. Bradley*, 164 U.S. 512 (1900).
² *In re Fresno Irrigation District*, 92 Calif. 286, 28 Pac. 275 (1901).

the law is seldom followed, nor is it practicable to follow, since not all of the taxable lands are irrigated. The rules and regulations adopted in Modesto Irrigation District in 1909 provide that water shall be apportioned upon the basis of acres irrigated rather than in proportion to the total assessment. It is therefore highly desirable that such provisions be so changed that a rational basis of distribution which can be easily followed will conform to the law. Otherwise the strict enforcement of the law will, as water becomes more valuable, be demanded, which may result in the objectional sale, barter and assignment of the use of water.¹

The maintenance and operation assessments of small canals owned by mutual companies on Hood River, Oregon, are based upon the quantity of water used rather than upon the stock owned. The public interest would be materially advanced by having it applied to all such companies. Most public service corporations are now selling water upon the basis of the quantity used.

There is no doubt but that irrigation districts can easily adopt and maintain a system based upon the mutual needs of each farmer, which would constitute an economic use of water, since, if a deficiency in the necessary funds occurred, due to the failure to sell sufficient water, it could readily be removed by an assessment upon the lands.

¹Jenison v. Redfield, 149 Cal. 500; 87 Pac. 62 (1906).

The Nampa Meridian Irrigation District has maintained a charge of \$1.00 per inch per annum since it began operation. That economic use can best be secured by a water charge per quantity used is not only evident from a meagre knowledge of human nature but is firmly established by the wasteful use of water which has resulted throughout the West where a flat rate per acre has been charged.

DISTRICT ELECTORS.

It has heretofore been shown that a majority of the States having irrigation district laws impose a residence qualification upon their district electors. As early as 1891, the California Supreme Court noted its approval of such qualification in replying to the objections that the vote which created an irrigation district may be carried by a majority of those who have no interest in the lands affected and that the non-resident owners of land lying within the district have no voice in the proceedings. The court held that such conditions were merely incident to and not the essence of the matter and were "no more than exists in every popular vote which involves the creation of a public debt or the adoption of a municipal organization."¹ It then quoted from the constitution thus: "No property qualification shall ever be required for any person to vote

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¹In re Modero Irrigation District, 22 Cal. 298; 28 Pac. 272 (1891).

or hold office," and "however much non-residents may be affected by the acts and vote of the community, only those who are inhabitants of the district can, by the constitution, be permitted to vote at any election."

Clearly, it is bad business policy to refuse land owners a voice in the means of development of their property because they may not live within the district boundary, and to permit persons who are not land owners to dictate to the property holders what they shall do with their estate is equally objectional. That definite and material disadvantage results from imposing a residence qualification upon electors in irrigation districts is generally conceded by those familiar with irrigation development.

Notwithstanding the fact that the constitutions of most of the western states contain similar provisions regarding property qualifications of general electors, a number of irrigation district laws impose such qualification upon district electors, among which are those of Idaho and Oregon, which have recently been construed by the courts.

The Supreme Court of Idaho in Pioneer Irrigation District v. Walker,¹ on November 15, 1911, confirmed an opinion by the District Court of Canyon County to the

¹Pioneer Irrigation District v. Walker, 20 Idaho, 605; 119 Pac. 304 (1911).

effect that a property qualification could not constitutionally be required of irrigation district electors. Various questions, most important of which was regarding the constitutionality of Sections I, II, III, and IV of Idaho's 1911 amendments, which deal with qualifications of electors, were presented upon an agreed statement of facts to determine whether the board should conduct an election upon the question of inclusion of lands under the new or old irrigation district law. Section 20, Art. I, of the Constitution of Idaho reads:-

"No property qualification shall ever be required for any person to vote or hold office, except in school elections or elections creating indebtedness."

After discussing at length the corporate nature of irrigation districts, the court said:- "If, then, an irrigation district is a political subdivision of the State, similar in kind and character to counties or cities in its general form or government, and is a quasi-municipal corporation, then there can be no question but that the provisions of the constitution in relation to the qualification of voters within said district is applicable, and that all elections held within such district must be conducted within the limits of the constitutional provisions and that the legislature, in creating such districts, and providing for elections therein, cannot prescribe qualifica-

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tions for electors except within the limitations and provisions of the constitution."

It then quoted with approval extracts from *In re Madera Irrigation District* heretofore mentioned, and said finally:- "These various sections, I, II, III, and IV, all relate to the elections and the method of voting under the provisions of the statute and are so closely related and connected that if one fails they must all fail and as such provisions are clearly a violation of the constitution, this court is forced to the conclusion that such sections are unconstitutional."

It is significant in this connection that at the same instant the court outlines points of similarity between irrigation districts, counties and cities, sufficient to justify the conclusion that districts are quasi-municipal corporations, it gives no weight or emphasis to points of difference which exist, and yet quotes with approval the following from *City of Nampa v. Nampa Irrigation District*,¹ "An irrigation district is a public quasi-corporation, organized, however, to conduct a business for the private benefits of the owners of land within its limits. They are the members of the corporation, control its affairs, and they alone are benefited by its operations."

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Although the purpose of making the above quotation was probably to emphasize the fact that irrigation districts were "public quasi-corporations," the remaining language lends strong evidence to the fact that irrigation district elections are closely analogous to "school elections or elections creating indebtedness" in which the constitution does not prohibit the property qualification of electors. It is, moreover, evident from the language used in *Bissett v. Pioneer Irrigation District*¹ on January 4, 1912, that the Idaho Legislature has power to impose such property qualification in irrigation district elections held to vote bonds. Basing its statement upon *Wiggin v. City of Lewiston*, 8 Idaho 527; 69 Pacific 286 (1902), wherein it was held that the Legislature had power "to prescribe property qualifications in elections to create indebtedness," the court said, "It would have been competent for the legislature to have prescribed a property qualification for persons offering to vote at an election held for the purpose of voting a bonded indebtedness."

Fortunately, we need not rest finally upon the dictum of the early California case, nor the conclusions reached in *Pioneer Irrigation District v. Walker*, since a logical decision upon this point was as recently as December 24, 1912,

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written by the Supreme Court of Oregon, in Payette Oregon Slope Irrigation District v. Peterson.¹ It is therein clearly shown that only the land owner has a direct interest in the choice or action of officers or management of district affairs, "and therefore the apparent reason for and purpose of the requirement of Section II, Article II (referring to the constitutional provision prohibiting the requirement of a property qualification of electors) as applicable to elections in municipal or quasi-municipal corporations fails in the case of the irrigation district."

The court showed that many elections are conducted by law which are not contemplated by the constitutional provision for "all elections."² It is further specifically shown that³ "the elective franchise conferred by Sec. II, Art. II, does not, nor was it intended to fix and define the qualification of voters at school meetings," which, as has been pointed out, are excepted by the Idaho constitution. The court rested its decision upon the grounds that "the election contemplated in Sec. II, Art. II, are only those relating to officers by whose action all of the people within the district are to be affected," and said in conclusion, "others than land owners have no possible

¹Payette Oregon Slope Irrigation District v. Peterson, 129 Ore. 123; 128 Pac. 837 (1912).

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³Harris v. Barr, 32 Ore. 348; 52 Pac. 17 (1898).

interest in the irrigation district, as such, or in its financial management, nor right to a voice in the naming of its officers, and a non-resident land owner has exactly the same interest and responsibility as a resident, and is entitled to the same voice in the direction of its affairs."

This reasoning is in harmony with the rule advanced by Dillon in "Municipal Corporations," which states that the right to vote for officers is extended to all who are to be affected by their actions.

The States which require irrigation district land owners to live within the district in order to vote and grant resident non land owners the elective franchise will do well to adopt more rational legislation based upon the above reasoning. Moreover, such action will, by placing irrigation district management where it logically belongs, tend to improve the status of district securities, which have, with debentures of other forms of irrigation organization since the epoch of commercial canal building, been looked upon with but little favor among financiers.

FINANCIAL ASPECT AND EVASION OF LAW.

The one vital question which confronts all irrigation districts is that of securing capital with which to develop their resources. To improve the financial status of

districts, California, Montana, and Texas have provided legislation whereby district bonds may be placed upon the same basis as those of cities, school districts and municipalities, and have made them legal investments for domestic securities. While these methods will, no doubt, assist the districts in selling bonds, investors will not purchase five or six per cent irrigation bonds at par when they can secure others, which are easier to dispose of, at a higher rate of interest. School districts may go up to eight per cent if they deem it desirable. The legal requirement that bonds be sold at par and that a low rate of interest be maintained demands an impossibility. This has resulted in an evasion of the law by means of a combination between bond buyer and contractor, wherein the contractor agrees to construct the system at a nominal price, probably 25 per cent in excess of a reasonable figure, and pass the excess thus obtained to the bond buyer when payment is received. Hence the district secures only 80 per cent in reality. For many reasons, two of which are of paramount importance, such arrangement is highly objectionable. It eliminates desirable competition in securing bids upon construction work, or bond sales, and thus causes the district to pay prices far in excess of what normally should be paid. But a greater difficulty is the fact that the best bond buyers

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believe that bonds purchased below the legal requirement are not a valid lien upon district lands and hence they will not buy them at any price.¹ Clearly legislation must be provided which will make irrigation district bonds sell on a competitive market in conformity to rather than by evasion of law. A higher rate of interest and permission to sell at 85 or 90 per cent par is the logical remedy and will enable land owners to make development now impossible. Moreover, it is highly probable that the ultimate cost will be decreased rather than increased. In this connection, it is gratifying to note that California, in 1913, provided that sales below par may be authorized by the district electors.

FINANCIAL ASPECT AND STATE SUPERVISION.

Bond dealers recognize that the full payment of the interest and principal of irrigation debentures without litigation depends most upon the financial success of the individual farmer. Again, they consider foreclosures bad business policy. To be able to say truthfully that they have never made a forced payment is a valuable asset. Hence, they avoid transactions where foreclosures are probable.

¹ Commonwealth Club of California, Vol. 6, p. 567.

In view of these facts, financial dealers are deeply concerned in the factors upon which the ultimate success of the irrigator depends. Obviously, the first of such factors is the feasibility of the proposed project. To give dealers assurance that projects are planned upon a sound basis, California has provided for examination by a commissioner as above mentioned, which bases its conclusions upon findings of fact. Necessary as it is that capital be convinced that a project is feasible, such knowledge is insufficient. Italy early recognized the importance of having its public authority see that works were "constructed according to the plans which were deposited . . . and if the expense corresponded with the estimates."¹

The Governor of California, in 1889, R. W. Waterman,² pointed out that other countries exercised State regulation in these matters, vividly pictured the status of irrigation districts in financial circles and proposed a remedy for the defect of the law in the following language:-

"There is no sufficient guarantee that the money will be expended as designed or that the work will be efficient The bond holders would fear, not the ultimate payment of bonds, but the collection of the interest on them, and the probable foreclosure to effect final collection.

¹Office of Experiment Stations Bulletin 192.

²Biennial Message of the Governor to the Legislature, 1889, p. 40.

"The districts, particularly the smaller ones, are looked upon as irresponsible and likely to become troublesome debtors outside of the matter of bottom security. It seems to me that this defect is to be remedied only by having the State in some way made a sponsor for the districts, not necessarily an endorser, but a controller, to the extent that the bond holders will feel that the affairs of these districts are to be properly managed and the moneys judiciously expended; that the plans of work are good, the estimates sufficient, and the administration efficient."

The views prevalent among those acquainted with irrigation district development, that much of the disastrous experience of California's early districts could have been avoided by the enactment and enforcement of laws as outlined by Governor Waterman, are confirmed in the following words by Mr. Frank Adams:- "Probably less than one-third of the districts that were organized under the Wright Act would have passed official public inspection."¹

Likewise, Colorado's experience in irrigation district activity has taught it that State supervision is very essential. In the Sixteenth Biennial Report of the State Engineer, after recommending State supervision, the author says:-

¹Report Department of Engineering, California, 1912.

"The districts, particularly the smaller ones, are looked upon as irresponsible and likely to become trouble-some before outside of the matter of bottom security. It seems to me that this defect is to be remedied only by having the State in some way make a sponsor for the districts, not necessarily an endorser, but a controller, to the extent that the bond holders will feel that the affairs of these districts are to be properly managed and the money judiciously expended; that the plans of work are good, the estimates sufficient, and the administration efficient."

The views prevalent among those acquainted with irrigation district development, that much of the disastrous experience of California's early districts could have been avoided by the enactment and enforcement of laws as outlined by Governor Waterman, are confirmed in the following words by Mr. Frank Adams:- "Probably less than one-third of the districts that were organized under the Wright Act would have passed official public inspection."

Likewise, Colorado's experience in irrigation district activity has taught it that State supervision is very essential. In the Sixteenth Biennial Report of the State Engineer, after recommending State supervision, the author says:-

"The districts which have real merit are seriously handicapped in making financial arrangements by the failures heretofore recorded against many in which failure was a foregone conclusion. That it is possible to organize an irrigation district along honorable lines and make the district a success is not disputed, but the present law lends itself too readily to the furtherance of the schemes of unscrupulous promoters."¹

In sharp contrast to the condition referred to in Colorado, Idaho District reports show that the districts are in a prosperous condition and that the land owners are satisfied with district organization. This contrast lends strong evidence in favor of supervision by State authorities and publicity by requiring each district to make annual reports showing the progress of construction work and the financial status of the district.

Legislation providing State supervision must not, if it is to be of great value, end by giving the State Engineer power to examine the proposed plans, as it does in several States. A careful examination of plans and feasibility should be financially provided for, and made with knowledge on the part of the examiner that the necessary recommendations will be effective, since he has

¹Report State Engineer of Colorado, 1912.

power to demand that the original plans be reasonably followed . . . That the public official who examines the project may know the exact financial status of the district at any time, the supervising board should be given power to demand accurate, systematic and uniform reports at regular intervals. The standardization of accounts of railroads, banks, insurance, gas, electric light, water and traction companies and other large corporations is an outgrowth of two distinct factors:- First, self interest; and, second, the imposition of governmental control. The companies found that they could thus not only secure more efficient and economic methods in management and operation but could thereby market their securities with less difficulty. Hence, but slight changes were necessary to comply to laws of governmental control when they were imposed.

While the same benefits will accrue to irrigation districts as a result of keeping systematic and standardized accounts, it is very doubtful that such uniformity would in a reasonable time be attained through effort initiated within the districts, as the management is not only transitory, but is frequently invested in men who are neither familiar with nor convinced of the value of scientific accounting. Therefore, a State commission, such as the one

California has provided to report upon a district before bonds are issued should be required by law to insist that all irrigation districts publish, in addition to frequent reports showing the progress of construction, annual statements of operation and maintenance expenses, and balance sheets prepared in conformity to a logical uniform standard. While the total lack of a balance sheet in connection with an annual statement (the actual condition in most of the California and Idaho reports) is indeed serious, the following unintelligible and misleading classification taken from the balance sheet of the Idaho Irrigation District purporting to show its financial status on the first Monday in January, 1912, may lead to results even more objectionable. Thus, the first item under the list of assets reads:- "The Idaho Canal System consisting of the Idaho and Idaho Falls or Boomer Canals and all laterals, right of way, head gates and dams appertaining thereto, including decree of fifty thousand inches of the waters of Snake River at \$40 per inch \$2,000,000.00"

A conclusion, from the above, that the major part of the \$2,000,000.00 asset item consisted of water rights, though probably erroneous, would not be unwarranted. But business prudence demands that water rights should not be capitalized

unless actually purchased, and then at a value never above the purchase price. It is probable, therefore, that the value of the total net assets as given, \$1,677,797.80, is very much inflated.

Similar criticism applies to the balance sheet of the New Sweden Irrigation District, also of Idaho.¹

State examination of irrigation district plans, to be of real service, must be accompanied by supervision of construction work and of permanent operation. The paramount requirement made of irrigation districts by such supervision should be thorough publicity based upon a sane system of irrigation accounting. That such a system will be of material aid in overcoming financial difficulties cannot be too strongly urged, and, that it can and will be readily obtained only through the medium of State supervision needs even greater emphasis.

CONCLUSIONS.

That the roll of irrigation districts in the future construction and particularly management of irrigation works will be of vast importance to the public cannot be denied. Their success concerns not the West alone. Those who finance the district, who are frequently residents of the East, have a direct interest in their

¹Ninth Biennial Report of State Engineer of Idaho, p. 79 & 85.

welfare. Moreover, manufacturing and transportation interests are affected by their success. Indeed, the economical use of one of the nation's greatest assets, upon which an adequate food supply for its inhabitants depends, will, in part, rest upon their efficiency. The country is, therefore, deeply concerned in the factors upon which their success depends.

However, with the Western States lies the responsibility of providing the fundamental elements of success. While new points may yet arise which will need construction by the courts, the paramount issue: that of the constitutionality of irrigation district laws, is firmly established. Furthermore, the constitutionality of permitting land owners, regardless of residence, and none others to have a voice in the management of district affairs has been upheld upon sound business principles. The elimination of the objectionable residence qualification of electors and the requirement that all electors be land owners can undoubtedly be safely made. The importance of such changes to the success of the districts cannot be overstated. The present impractical laws governing the sale of bonds need equal attention. To get financial dealers to purchase irrigation district bonds, it must be made evident to them that such investments will, either by

the payment of a high rate of interest or through purchase of the bonds at a discount, bring reasonable returns. Moreover, it is equally necessary to convince the dealers, through the medium of adequate State supervision; that the districts are feasible; that the money will be judiciously expended; and that the ultimate management will be efficient under the general supervision of State authorities, which require the districts to keep and publish accurate accounts in conformity to a logical standardized system.

Necessary as it is that financial circles be convinced through the medium of State supervision that an investment will pay good returns, that the money will be carefully expended, and that the management will be efficient, the one factor of greatest importance, the actual success of the districts, which can undoubtedly be attained in large measure through the same supervisory medium, will contribute most toward making irrigation district securities desirable investments. The States having irrigation district laws will, in providing these elements upon which the success of the districts depends, undoubtedly contribute to the national welfare.

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